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Security Council

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Letter dated 24 May 2011 from the Permanent Representative of Cambodia to the United Nations addressed to the President of the Security Council

With reference to the recommendation of the United Nations Security Council of 14 February 2011, concerning the armed conflict at the Cambodia-Thailand border, I have the honour to bring to your kind attention the following developments:

Since the informal ASEAN Foreign Ministers' Meeting in Jakarta on 22 February 2011, Indonesia, as Chair of ASEAN, has presented a total of seven drafts of the terms of reference for the deployment of the Indonesian Observers Team to the affected areas of the Cambodia-Thailand border.

Cambodia has given its immediate and positive response to each of these drafts, and already signed the letter of acceptance to put the terms of reference into effect on 3 May 2011. Thailand, however, has not so far given its acceptance of the terms of reference.

As a further effort to speed up the deployment of the Indonesian Observers Team to observe the commitment of both sides to avoid further armed clashes and engender a permanent ceasefire, a trilateral meeting of the Foreign Ministers of Cambodia, Indonesia and Thailand was convened in Jakarta on 9 May 2011 by the Minister for Foreign Affairs of Indonesia, Chair of ASEAN.

At that meeting the Ministers concurred to positively recommend a package of resolutions to their respective governments as stated in the attached agreed summary of the meeting (annex I). Through three successive letters, herewith attached, Cambodia positively responded and confirmed its full acceptance of the package of resolutions (annexes II to IV). Thailand, however, has not given its positive reply until now, in spite of three successive reminder letters from the Indonesian Foreign Minister, herewith attached (annexes VII to IX).

I should be grateful if the present letter and its annexes could be circulated to all members of the Security Council as a document of the Security Council.

(*Signed*) Kosal **Sea**
Ambassador and Permanent Representative

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Annexes to the letter dated 24 May 2011 from the Permanent Representative of Cambodia to the United Nations addressed to the President of the Security Council

Annex I

AGREED SUMMARY

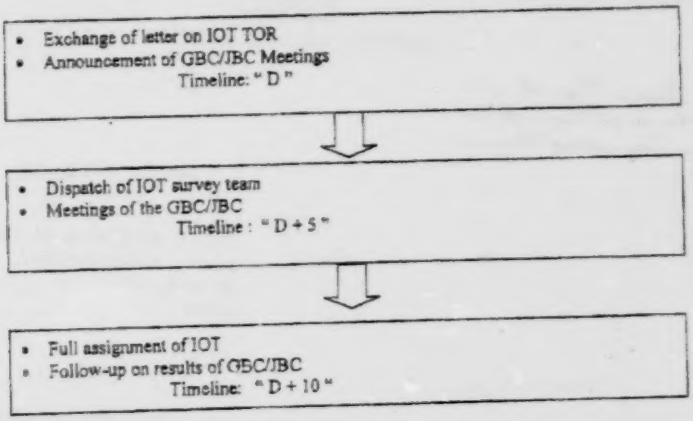
Meeting of the Deputy Prime Minister, Minister for Foreign Affairs and International Cooperation of Kingdom of Cambodia, H.E. Hor Namhong, the Minister of Foreign Affairs of the Kingdom of Thailand, H.E. Kasit Piromya, and the Minister of Foreign Affairs of the Republic of Indonesia, H.E. R.M. Marty M. Natalegawa in Jakarta on 9 May 2011

1. As a follow-up to the meeting of the Prime Minister of the Kingdom of Cambodia, H.E. Samdech Hun Sen, the Prime Minister of the Kingdom of Thailand, H.E. Abhisit Vejjajiva, and the President of the Republic of Indonesia, H.E. Susilo Bambang Yudhoyono, the Deputy Prime Minister, Minister for Foreign Affairs and International Cooperation of Kingdom of Cambodia, H.E. Hor Namhong, the Minister of Foreign Affairs of the Kingdom of Thailand, H.E. Kasit Piromya, and the Minister of Foreign Affairs of the Republic of Indonesia, H.E. R.M. Marty M. Natalegawa, met in Jakarta, on 9 May 2011.

2. Following the discussion, they reaffirm the Statement of the Chair of ASEAN following the Informal Meeting of the Foreign Ministers of ASEAN on 22 February 2011 and the Chairman Statement of the 18th ASEAN Summit 8 May 2011, as follows:

> *"We emphasized the underlying norm and principle of ASEAN that differences between ASEAN Member States should be amicably resolved in the spirit of ASEAN Solidarity, in accordance with the principles contained in the Treaty of Amity and Cooperation in Southeast Asia (TAC) and the ASEAN Charter*
>
> *We welcomed Cambodia's and Thailand's commitment to peacefully resolve their differences through political dialogue and negotiations with a view to achieving mutually acceptable solution through the fullest utilization of their existing bilateral mechanism, with appropriate engagement of Indonesia, current Chair of ASEAN. In this regard, we appreciate that Cambodia and Thailand have agreed on the text of the Terms of Reference (TOR) on the Indonesian Observers Team (IOT) in the affected areas following the incidents in February 2011 and encourage the attainment of an environment conducive to their assignment. We also expressed our appreciation and support for the continuing effort of Indonesia, current Chair of ASEAN, to facilitate the process through its appropriate engagement which would help advance our collective efforts to attain the ASEAN Community."*

3. In pursuit of the above, and in accordance with the task set by the Leaders at their aforementioned meeting on 8 May 2011, the Foreign Ministers concurred on a package of solutions, with appropriate timeline, as below:


• Exchange of letter on IOT TOR
• Announcement of GBC/JBC Meetings
Timeline: " D "
• Dispatch of IOT survey team
• Meetings of the GBC/JBC
Timeline : " D + 5 "
• Full assignment of IOT
• Follow-up on results of GBC/JBC
Timeline: " D + 10 "

4. The Foreign Ministers agreed to positively recommend the above package of solutions to their respective Governments for their early approval.

Annex II

KINGDOM OF CAMBODIA

NATION - RELIGION - KING

Deputy Prime Minister
Minister of Foreign Affairs
and International Cooperation

Jakarta, 10 May 2011

H.E. Dr. M.R. Marty M. Natalegawa
Minister of Foreign Affairs
Republic of Indonesia
Jakarta

Dear colleague,

I have the honour to acknowledge receipt with deep appreciation Your Excellency's letter dated 09 May 2011, along with the draft Agreed Summary of the Meeting of the Foreign Ministers of Cambodia, Thailand and Indonesia, in Jakarta on 9 May 2011.

In this regard, I am pleased to inform you that the Royal Government of Cambodia accepts in full the content of the above Agreed Summary.

I sincerely hope that the proposed three-step package resolutions could be implemented soon.

Please accept, Your Excellency, the assurances of my highest consideration and warmest regard.

Warm regards

Hor Namhong

Annex III

KINGDOM OF CAMBODIA

NATION - RELIGION - KING

Deputy Prime Minister
Minister of Foreign Affairs
and International Cooperation

Phnom Penh, 19 May 2011

H.E. Dr. M.R. Marty M. Natalegawa
Minister of Foreign Affairs
Republic of Indonesia
Jakarta

Dear colleague,

I have the honour to acknowledge receipt with deep appreciation Your Excellency's letter dated 19 May 2011 addressed to myself and Thai Foreign Minister, requesting response on the package of solutions agreed in the Meeting of the Foreign Ministers of Cambodia, Thailand and Indonesia, in Jakarta on 9 May 2011.

In this regard, I wish to recall to Your Excellency that I have already sent you a letter, dated 10 May 2011, expressing full acceptance of the Royal Government of Cambodia of the package of resolutions (Roadmap), which we all (the three Foreign Ministers) agreed on 09 May 2011.

Please accept, Your Excellency, the assurances of my highest consideration and warmest regard.

Hor Namhong

Annex IV

KINGDOM OF CAMBODIA

NATION - RELIGION - KING

Deputy Prime Minister
Minister of Foreign Affairs
and International Cooperation

Phnom Penh, 22 May 2011

H.E. Dr. M.R. Marty M. Natalegawa
Minister of Foreign Affairs
Republic of Indonesia
Jakarta

Dear colleague,

With reference to Your Excellency's letter dated 19 May 2011 and my reply on the same date, may I once again recall that the Royal Government of Cambodia has already fully agreed to the package of solutions concurred at the Meeting of the Foreign Ministers of Cambodia, Thailand and Indonesia, in Jakarta on 9 May 2011.

In order to execute, as early as possible, the package of resolutions, to consolidate the de facto ceasefire on the ground, it is indispensable that the Government of Thailand gives its positive response to this package of solutions, as to be "positively recommended" to their respective governments by the three Foreign Ministers, in accordance with Point 4 of the Agreed Summary.

Please accept, Your Excellency, the assurances of my highest consideration and warmest regard.

Hor Namhong

Annex V

KINGDOM OF CAMBODIA

NATION - RELIGION - KING

Deputy Prime Minister
Minister of Foreign Affairs
and International Cooperation

Phnom Penh, 24 May 2011

H.E. Dr. M.R. Marty M. Natalegawa
Minister of Foreign Affairs
Republic of Indonesia
Jakarta

Dear minister,

I have the honor to refer to Your Excellency's letter dated 23 May 2011 and my previous letter to you dated 22 May 2011, concerning the package of solutions concurred at the Meeting of the Foreign Ministers of Cambodia, Thailand and Indonesia, in Jakarta on 9 May 2011.

In this regard, I would like to reemphasize the indispensability of the positive response from Government of Thailand, in order to implement the above package of solutions. It is absolutely unacceptable to act otherwise and inconsistent with the package of solutions.

Please accept, Your Excellency, the assurances of my highest consideration and

Warm regards

Hor Namhong

Annex VI

MINISTER FOR FOREIGN AFFAIRS
REPUBLIC OF INDONESIA

Jakarta, 9 May 2011

Excellencies,

Pursuant to our meeting in Jakarta on 9 May 2011, attached please find:

AGREED SUMMARY

Meeting of the Deputy Prime Minister, Minister for Foreign Affairs and International Cooperation of Kingdom of Cambodia, H.E. Hor Namhong, the Minister of Foreign Affairs of the Kingdom of Thailand, H.E. Kasit Piromya, and the Minister of Foreign Affairs of the Republic of Indonesia, H.E. R.M. Marty M. Natalegawa in Jakarta on 9 May 2011

Please accept, Excellencies, the assurances of my highest consideration.

Dr. R.M. Marty M. Natalegawa

His Excellency Mr. Hor Namhong
Deputy Prime Minister, Minister for Foreign Affairs and International Cooperation
of the Kingdom of Cambodia
PHNOM PENH

His Excellency Mr. Kasit Piromya
Minister of Foreign Affairs of the Kingdom of Thailand
BANGKOK

Annex VII

MINISTER FOR FOREIGN AFFAIRS
REPUBLIC OF INDONESIA

Jakarta, 10 May 2011

Dear Excellencies,

I wish to acknowledge with appreciation, the receipt of the letter from H.E. Mr. Kasit Piromya, Minister of Foreign Affairs of the Kingdom of Thailand, dated 9 May 2011 (with attachment) as well as the letter from H.E. Mr. Hor Nam Hong, Deputy Prime Minister, Minister of Foreign Affairs and International Cooperation of the Kingdom of Cambodia dated 10 May 2011, acknowledging the receipt of the Agreed Summary of the meeting of the Deputy Prime Minister, Minister for Foreign Affairs and International Cooperation of Kingdom of Cambodia, H.E. Hor Namhong, the Minister of Foreign Affairs of the Kingdom of Thailand, H.E. Kasit Piromya, and the Minister of Foreign Affairs of the Republic of Indonesia, H.E. R.M. Marty M. Natalegawa in Jakarta on 9 May 2011, which I attached to my letter of the same date to Your Excellencies.

With reference to the suggestion from Thailand to amend the letter of acceptance to be used in the exchange of notes on the Terms of Reference of the IOT, I would like to share some preliminary thoughts: First, *identical* draft of the letter of acceptance has been considered and agreed to by both Cambodia and Thailand. Indeed, in the case of Cambodia, this agreed letter of acceptance has been formally sent to the Government of Indonesia on 3 May 2011. Thus, to amend the letter of acceptance at this stage would also have an impact on the nature of the acceptance by Cambodia.

Second, the proposed amendments from Thailand to the letter of acceptance appear to relate to issues that we have agreed to address through the package solutions approach as indicated in the Agreed Summary that we plan to submit to our governments with positive recommendation. In other words, while they are related to the operationalization of the TOR, they are not strictly speaking related to the coming into effect of the TOR.

His Excellency Mr. **Hor Namhong**
Deputy Prime Minister, Minister for Foreign Affairs and International Cooperation
of the Kingdom of Cambodia
PHNOM PENH

His Excellency Mr. **Kasit Piromya**
Minister of Foreign Affairs of the Kingdom of Thailand
BANGKOK

Finally I wish to acknowledge the agreement by the Royal Government of Cambodia of the content of the Agreed Summary.

Please accept, Excellencies, the assurances of my highest consideration.

Dr. R.M. Marty M. Natalegawa

Annex VIII

MINISTER FOR FOREIGN AFFAIRS
REPUBLIC OF INDONESIA

Jakarta, 19 May 2011

Dear colleagues,

I wish to acknowledge with appreciation all the communications we have had since our last meeting in Jakarta on 9 May 2011. The communications have been extremely useful in deepening further understanding on the concurrence that we have reached at the aforementioned meeting on the package of solutions to be positively recommended to our respective governments.

I believe the conditions are propitious for us to begin the process as reflected in the aforementioned approach.

I would be very grateful for your response in this regard.

Please accept, Excellencies, the assurances of my highest consideration.

Dr. R.M. Marty M. Natalegawa

His Excellency Mr. Hor Namhong
Deputy Prime Minister, Minister for Foreign Affairs and International Cooperation
of the Kingdom of Cambodia
PHNOM PENH

His Excellency Mr. Kasit Piromya
Minister of Foreign Affairs of the Kingdom of Thailand
BANGKOK

Annex IX

MINISTER FOR FOREIGN AFFAIRS
REPUBLIC OF INDONESIA

Jakarta, 23 May 2011

Dear colleagues,

With reference to my letter dated 19 May 2011, I wish to acknowledge with appreciation the letters from His Excellency Mr. Hor Namhong, Deputy Prime Minister/Minister for Foreign Affairs and International Cooperation of the Kingdom of Cambodia, dated 19 May and 22 May 2011. I am also pleased that I have had occasions to speak with both His Excellency Mr. Kasit Piromya, Minister of Foreign Affairs of the Kingdom of Thailand, and His Excellency Mr. Hor Namhong, Deputy Prime Minister/Minister for Foreign Affairs and International Cooperation of the Kingdom of Cambodia in recent days.

Once again, it remains my firm belief that conditions are propitious for the implementation of the package of solutions approach that we have identified on 9 May 2011. Indeed, this has become even more so given the information that I received on the convening of the GBC from General Prawit Wongsuwan, Minister of Defense of Thailand and General Tea Banh, Minister of National Defense of Cambodia at the side lines of the recent ADMM in Jakarta. Further, I have been informed of the sides' readiness to receive the IOT survey team as also provided in the package of solutions approach.

It is, I believe, important that we maintain the positive momentum generated by the recently concluded ASEAN Summit and the directives that we have obtained from our Leaders. Every positive condition on the ground must be sustained and enhanced. I believe that the package of solutions, with its provisions for the operationalization of the IOT and the rejuvenation of the GBC/IBC is key in this regard.

His Excellency Mr. Hor Namhong
Deputy Prime Minister, Minister for Foreign Affairs and International Cooperation
of the Kingdom of Cambodia
PHNOM PENH

His Excellency Mr. Kasit Piromya
Minister of Foreign Affairs of the Kingdom of Thailand
BANGKOK

Finally, as I had informed Excellencies earlier, at the request of the United Nations Security Council, I have received a call from the United Nations Under Secretary General for Political Affairs, Mr. Lynn Pascoe, requesting information on ASEAN latest's effort which continues to receive the United Nations support.

I would be grateful for your response to the above.

Please accept, Excellencies, the assurances of my highest consideration.

Dr. R.M. Marty M. Natalegawa

United Nations A/65/855–S/2011/329

General Assembly
Security Council

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25 May 2011

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General Assembly
Sixty-fifth session
Agenda item 125
International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States between 1 January and 31 December 1994

Security Council
Sixty-sixth year

Identical letters dated 20 May 2011 from the Secretary-General addressed to the President of the General Assembly and the President of the Security Council

I have the honour to transmit to you the attached letter dated 5 May 2011 that I have received from Judge Dennis Byron, President of the International Criminal Tribunal for Rwanda (see annex).

The letter contains two requests. The first relates to filling the position of President of the Tribunal. President Byron's term of office expires at the end of this month. The Statute of the Tribunal requires that the President be elected from among the permanent judges and be a member of one of the Trial Chambers. However, two permanent judges will resign and four will be redeployed to the Appeals Chamber in The Hague upon the completion of their remaining cases this year or early next year, leaving the Tribunal without any Arusha-based permanent judges. President Byron therefore requests amendments to the Statute of the Tribunal in order to allow the President to be a member of the Appeals Chamber and to be based in The Hague.

As an alternative, if it is decided that the President should continue to be a member of one of the Trial Chambers and to be based in Arusha, President Byron proposes that the Statute be amended to allow an ad litem judge to be eligible for election as President.

The second request is that President Byron be permitted to work part-time at the Tribunal and simultaneously to engage in another occupation from 1 September 2011. This is because President Byron has been appointed as President of the Caribbean Court of Justice and will be sworn in on 1 September 2011. He intends to resign from the Tribunal upon the delivery of the judgement in the *Karemera et al.* case around December 2011.

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As a result of President Byron's intended resignation from the Tribunal upon the completion of his remaining case, Judge Bakhtiyar Tuzmukhamedov will be redeployed to the Appeals Chamber instead of him.

It falls to the General Assembly and the Security Council to consider and decide on these requests. Accordingly, I would be grateful if you would bring the letter from President Byron to the attention of the members of the General Assembly and the members of the Security Council.

(*Signed*) **BAN** Ki-moon

Annex

Letter dated 5 May 2011 from the President of the International Criminal Tribunal for Rwanda addressed to the Secretary-General

I would be grateful if you could bring these three urgent matters to the attention of the Security Council.

1. The Offices of President and Vice-President of the International Criminal Tribunal for Rwanda

I hereby request that the Security Council remove the requirement in article 13 (2) of the Statute that the President be a trial judge and the requirement pursuant to article 12 bis (3) with reference to article 13 bis (3) of the Statute of the International Criminal Tribunal for the Former Yugoslavia with reference to article 22 (2) of the Statute of the International Court of Justice that the President be resident at the seat of the Court to enable the President to be redeployed to the Appeals Chamber and reside in The Hague, if need be, and authorize and make provision for an ad litem judge to be elected Vice-President, to act as President in the absence of the President and, if required, to become President by election or otherwise.

Background

On 1 April 2011, the Tribunal held a plenary, which all permanent appeals and trial judges, except Judge de Silva, and most ad litem judges attended, at which it was discussed how to fill the managerial posts of the Tribunal in order to accomplish the Tribunal's completion strategy. I was authorized by all judges to request the assistance of the Office of Legal Affairs to obtain the approval and the necessary action of the Secretary-General and the Security Council with respect to what needs to be done for the Tribunal to fill its managerial posts after the expiry in May 2011 of my second term as President and of Judge Khan's second term as Vice-President.

Rationale

The discussion at the plenary was caused by the fact that by March 2012, all permanent judges, after completion of their judgements, will either have resigned (Judge De Silva and I) or be redeployed to the Appeals Chamber (Judges Khan, Sekule, Ramaroson and Tuzmukhamedov). It is expected that there will be trial activities until June 2012. The enclosure to this letter shows the residual tasks of the Tribunal for which provision is being made in the budget for service until the end of 2012.

The plenary was in agreement that the Tribunal's completion strategy requires that the Tribunal, at least until the completion of all trial activities, retain a President and a Vice-President who both must be resident in Arusha as required by the Statute with respect to the President, and that all appeals judges reside in The Hague. Furthermore, there was agreement that the Rules should not be amended to allow an extension of my term as President. To this end, no intervention of the Security Council will be required, as a permanent judge should be elected as the new President. During discussions, Judge Sekule agreed to consider whether to accept election as President, but underscored that he will not forgo his redeployment to the

Appeals Chamber after the delivery of the judgement in *Ngirabatware*, currently scheduled for March 2012. The Security Council could consider that it may facilitate the Tribunal in case the President to be elected is redeployed to the Appeals Chamber, if article 13 (2) of the Statute were amended to remove the provision that the President must be a trial judge and if article 13 bis (3) were modified to allow the President, after redeployment to the Appeals Chamber, to reside in The Hague.

With respect to the Vice-President, the majority of the permanent judges and all ad litem judges agreed that the unavailability of any permanent judges made it necessary that an experienced ad litem judge could be elected Vice-President and act as President during the absence of the President. Should the Security Council consider that it cannot provide for the President to be redeployed to the Appeals Chamber and reside in The Hague, we would request, as an alternate solution, that if for any reason the President/permanent judge ceased to be President and no other permanent judge was available to serve in Arusha, the ad litem judge/Vice-President could become President, by election or otherwise.

2. Part-time service of Judge Dennis Byron

Leave is requested for Judge Dennis Byron (myself) to demit office as a permanent judge of the Tribunal on the delivery of the judgement in the *Karemera et al.* case and to work on a part-time basis from 1 September 2011 until the date of that judgement while engaged in another judicial occupation.

Background

I have been at the Tribunal since June 2004, and have sat as a judge in the *Simba* case and as Presiding Judge in the *Rwamakuba*, *Nchamihigo*, *GAA*, *Kalimanzira*, *Muvunyi* (retrial) and *Karemera et al.* cases. In addition, I presided over the pretrial of several cases and performed many other judicial functions. Since May 2007, I have been President of the Tribunal, and I am due to conclude my tour of duty in that Office on 27 May 2011. At that time, my main remaining duty will be the delivery of the judgement in the *Karemera et al.* case. The case is very advanced. The evidence phase is completed; the closing arguments are scheduled for 22 August 2011 and judgement delivery for December 2011. This workplan takes into account my work on a part-time basis from September until judgement delivery.

The Caribbean Community Heads of Government appointed me to be the next President of the Caribbean Court of Justice and to succeed the current President when he retires later this year. The action plan is for me to be sworn in on 1 September 2011 and to work part-time at the Tribunal until I have completed my obligations to the Tribunal.

I would like to assure you of my commitment to the work of the Tribunal and the complete and honourable discharge of my obligations. This arrangement will not give rise to any conflict of interest and will not delay the judgement delivery in this case. I should point out, however, that we have prepared a very aggressive deliberation schedule as part of our determination to meet the completion strategy targets and reduce delay in the judicial process.

In these exceptional circumstances, and considering the importance of the timely completion of the *Karemera et al.* case, I request that the Security Council

authorize me to work part-time from September 2011 until the delivery of the judgement in the *Karemera et al.* case and to engage in another judicial occupation in my home region during that period.

3. Assignment of Judge Tuzmukhamedov to the Appeals Chamber

I would like to refer to my letter of 29 May 2009, in which I discussed the expansion of the Appeals Chamber and redeployment of trial judges. I now confirm that I have decided not to join the Appeals Chamber. After consultation with the permanent judges, I have decided to assign Judge Tuzmukhamedov (Russian Federation) to the Appeals Chamber upon the completion of his current cases.

Judge Tuzmukhamedov joined the Tribunal as a permanent judge in September 2009. Since then, he has been assigned to the *Bagaragaza*, *Ndahimana* and *Nzabonimana* cases. Judgement delivery in the last of these cases is scheduled for December 2011.

(*Signed*) Dennis **Byron**
President

Enclosure

Initial projections for the remaining caseload of the International Criminal Tribunal for Rwanda

Second half of 2011:

(i) Completion of three current trial cases (*Karemera*, *Nzabonimana* and *Ndahimana*)

(ii) Completion of Prosecution evidence preservation in *Bizimana* and *Mpiranya* and of any defence evidence preservation in *Kabuga*

(iii) Completion of referral applications concerning *Sikubwabo* and *Kayishema*

(iv) Pretrial proceedings in cases against fugitive accused arrested before 1 July 2011 and in *Uwinkindi*, if not referred

(v) Possible revocation proceedings in cases against *Bucyibaruta* and *Munyeshyaka*, referred to France in November 2007

(vi) Review of witness protection orders concerning 508 witnesses

First half of 2012:

(vii) Continuation into early 2012 of *Ngirabatware* and *Nizeyimana*

(viii) Preservation of defence evidence in *Bizimana* and *Mpiranya*

(ix) Three genocide trials, cf. (iv), if *Uwinkindi* is not referred

(x) Two more genocide trials, cf. (v), if revocation is decided

(xi) Three contempt/false testimony trials

(xii) Pretrial proceedings in cases of fugitive accused arrested after 30 June 2011

(xiii) Pretrial proceedings in a number of contempt/false testimony cases, where an indictment is confirmed before 1 July 2012

(xiv) Indictment amendment decisions in the cases of seven fugitives

(xv) Ongoing review of witness protection orders, cf. (vi)

Second half of 2012:

(xvi) Spillover of trials, cf. (ix)-(xi)

(xvii) A number of contempt/false testimony trials, cf. (xii)